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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MARION
6

7 ALLANN BROS. COFFEE CO. INC., an)
Oregon Corporation,)
8)
Plaintiff,) No. 11C10397
9)
10 v.) FIRST AMENDED COMPLAINT
(Breach of Space Lease)
11)
SALEM AREA MASS TRANSIT) NOT SUBJECT TO MANDATORY
12 DISTRICT, MARION COUNTY) ARBITRATION
OREGON, CITY OF SALEM, and LCG)
13 PENCE CONSTRUCTION, LLC)
14 Defendant.)

15 By way of its First Amended Complaint against Defendants, Plaintiff Allann Bros.
16 Coffee Co. Inc. alleges as follows:
17

18 **FIRST COUNT**

19 **BREACH OF LEASE – DEFENDANT SALEM AREA MASS TRANSIT DISTRICT**

20 1.

21 Plaintiff Allann Bros. Coffee Co. Inc. was and is at all material times herein a duly
22 organized and existing Oregon corporation.
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2.

Defendant Salem Area Mass Transit District (herein after referred to as "Defendant SAMT") was and is at all material times herein a duly organized and existing Oregon transit district and a political subdivision of the State of Oregon.

3.

On November 5, 2001 Plaintiff, as tenant, entered into a Space Lease with Defendant SAMT as landlord. The original term of the lease was to be for a period of 120 months and such lease had a renewal option for five (5) successive terms of five (5) years each. The Space Lease demised certain premises to Plaintiff situated within the structure popularly known as the "Courthouse Square" and is more particularly described in the parties' Space Lease, a copy of which is attached, marked Exhibit 1 and by this referenced incorporated herein.

4.

Plaintiff paid base rent to Defendant SAMT pursuant to the terms of the aforesaid Space Lease, together with advancing and paying a security deposit in the amount of \$5,036.50. Plaintiff further agreed to pay as additional rent all carrying costs for the subject Space Lease including, but not limited to, its pro-rated portion of all taxes, insurance costs and utility charges.

5.

Pursuant to the terms of paragraph 3.2 of the aforesaid Space Lease, Plaintiff was obligated to pay and did pay operating expenses for occupancy of the subject space at the initial rate of \$402.92 per month for the first 12 months of the term.

1 6.

2 Pursuant to the terms of the aforesaid Space Lease, Plaintiff made numerous tenant
3 improvements to the space in order to permit Plaintiff to operate a coffee shop and limited deli
4 on the premises popularly known as the "Courthouse Square Beanery."

5 7.

6 Pursuant to the lease terms of Section 12.1, Defendant SAMT warranted that it is the
7 owner of the premises and has good right to lease the same. Defendant SAMT also warranted
8 that it would defend the tenant's right to quiet enjoyment of the premises from the lawful claims
9 of all persons during the lease term. As a part-owner of the premises, Defendant SAMT had
10 responsibility to ensure that the same was constructed in a good and workmanlike manner and in
11 conformance with all applicable plans, specifications and building codes in order to provide a
12 safe and habitable commercial premises in which the Plaintiff and its employees were to conduct
13 business for profit.
14

15 8.

16 On or about August 4, 2010, Defendant SAMT notified Plaintiff that Defendant SAMT
17 was terminating the lease with Plaintiff pursuant to section 9.2 on the alleged grounds that
18 Defendant SAMT received formal notice from its consultant that the building structure of which
19 the leased premises were a part were found to be in a dangerous condition on July 30, 2011. The
20 City of Salem gave notice to vacate the premises within 60 days. A copy of the aforesaid August
21 4, 2010 letter is attached, marked Exhibit "2" and by this reference incorporated herein.
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9.

Despite demand, Defendant SAMT refused to compensate Plaintiff for the loss of business advantage concerning the unexpired term of the lease and all extensions. The subject premises were not damaged by any external force. Rather, the subject premises were defectively constructed, allowed to fall into disrepair, and, as such, became unfit for occupancy before expiration of the lease term. As an owner of the building and the landlord involved, Defendant SAMT has responsibility to continuously provide habitable commercial rental space to Plaintiff and to honor the terms and provisions of the lease. Defendant SAMT is responsible to Plaintiff in damages for its breach by failing to provide commercially habitable premises and by terminating the Space Lease without compensating Plaintiff for loss of its business advantage and recovery of the value of its leasehold improvements. Plaintiff's leasehold improvements were physically damaged by Defendant's failure to maintain the premises in habitable condition.

10.

The aforesaid 2010 termination notice was wrongful and, as such, Defendant SAMT is responsible to Plaintiff in damages for the following items and in the amounts designated, to-wit:

Lease Hold Improvements Damaged and Rendered Physically Unusable	\$71,649.88
Equipment Storage	\$300.00
Inventory, Package and Relocation of Computer and Various Other Equipment	\$137.50
Moving Costs	\$2250.96

Lease Deposit Not Returned	\$5,036.50
Controller Accounting Costs	\$1,200.00
TOTAL	\$80,574.88

11.

Section 17.2 of the foregoing Space Lease further provides that in the event suit or action is filed to enforce the agreement, then the prevailing party is entitled to recover their reasonable costs and expenses of such suit, including reasonable attorney fees. Plaintiff should also be awarded judgment for its attorney fees incurred in having to bring this suit against Defendant SAMT.

SECOND COUNT

NEGLIGENCE – DEFENDANT MARION COUNTY OREGON AND DEFENDANT SAMT

12.

Plaintiff incorporates herein by this reference paragraphs 1 through 11 above.

13.

Defendant Marion County Oregon (hereinafter referred to as “Defendant County”) was and is at all material times herein a duly organized and existing Oregon county and political subdivision of the state of Oregon.

14.

Defendant SAMT and Defendant County were and are the owners of the commercial improvement and underlying real property popularly known as the Courthouse Square.

15.

Defendant SAMT and Defendant County contracted to have built for their benefit the Courthouse Square with the purpose to use the same as a transit hub, rentable office space and rentable retail space.

16.

At all times material herein and prior to November 5, 2001, Defendants SAMT and County offered space in the Courthouse Square improvement for rent to third parties on a long term lease basis. Plaintiff was a prior occupant of the building that was razed to make room for building the Courthouse Square commercial improvement. Plaintiff was one of the parties approached by the Defendant SAMT and/or Defendant County to rent commercial space on a long term basis in the Courthouse Square. Defendant SAMT and/or Defendant County expressly and impliedly represented that the commercial space offered for rent to Plaintiff on a long term basis would be safe and fit for continued occupancy during the term of any long term lease. Defendants SAMT and County owed Plaintiff a duty to provide Plaintiff with commercial lease space fit for continued occupancy during the term of the foregoing Exhibit 1 Space Lease. Plaintiff was the first and only occupant of the demised premises described in the Exhibit 1 Space Lease.

17.

Defendants SAMT and County were negligent in the following respects, among others:

- a. Failing to require the prime general contractor engaged to construct the Courthouse Square to have them maintain sufficient insurance to cover any damages relating to

1 construction defects which might manifest themselves prior to expiration of the
2 applicable statute of limitations for negligent construction;

3 b. Accepting construction of subject property without verifying all plans and
4 specifications were properly followed by the prime general contractor and its
5 subcontractors during the course of construction;

6 c. Failing to obtain competent and independent tests to insure that all structural
7 materials used in construction of the Courthouse Square met or exceeded industry
8 standards and applicable code requirements;

9 d. Failing to properly supervise the course of construction and scope of work as
10 construction of the Courthouse Square progressed; and

11 e. Failing to maintain the premises in habitable condition that would not cause
12 physical damage to Plaintiff's improvements.
13

14 18.

15 Defendant SAMT and County's negligence as aforesaid breached the duty of due care
16 owed to Plaintiff. The above described damage to Plaintiff was foreseeable inasmuch as Plaintiff
17 was induced to occupy the demised premises on a long term basis and thereby advanced
18 substantial monies and effort to make the premises operational as a coffee shop and limited deli.
19

20 19.

21 Plaintiff was not aware of Defendant SAMT and Defendant County's negligence until
22 Plaintiff received the August 4, 2010 City of Salem letter (Exhibit 2) as aforesaid and Plaintiff
23 could not have been reasonably aware of such negligence until receipt of said letter.
24

1 20.

2 Plaintiff submitted a Tort Claim notice to Defendant SAMT on January 13, 2011 and to
3 Defendant County on January 13, 2011.

4 21.

5 Plaintiff has been damaged in the amount of \$80,574.88 as a result of Defendant SAMT
6 and Defendant County's negligence as aforesaid. Plaintiff's damages include physical damage to
7 tangible physical property including but not limited to tenant improvements.

8 **THIRD COUNT**

9 **NEGLIGENCE – DEFENDANT CITY OF SALEM**

10 22.

11 Plaintiff incorporates herein by this reference paragraphs 12 through 16 above.

12 23.

13 Defendant City of Salem (herein after referred to as "Defendant Salem") at all times
14 material herein was a municipal corporation and political subdivision of the State of Oregon.

15 24.

16 At all times material herein Defendant Salem had the duty to inspect and review all facets
17 of the Courthouse Square construction, including but not limited to, ensuring that all plans and
18 specifications submitted for construction were in compliance with applicable building codes;
19 ensuring that all construction work was done pursuant to approved plans and specifications and
20 was in compliance with all applicable building codes and insuring that all materials used in
21 construction according to approved plans and specifications met applicable building codes in
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1 order to protect and preserve the public health, safety and welfare and to insure that the premises
2 would be safe for occupancy.

3 25.

4 The Defendant Salem was negligent and breached its duty of due care owed to Plaintiff
5 as a prospective renter of commercial lease space in the Courthouse Square in one of more of the
6 following respects:

- 7
- 8 a. Failing to indentify that the plans and specifications submitted for construction of the
9 Courthouse Square were not in compliance with applicable building codes and did
10 not meet industry standards for safe construction of a commercial improvement of
11 the size, type and configuration of the Courthouse Square;
 - 12 b. Approving construction work that was not done according to approved plans and
13 specifications and in compliance with applicable building codes;
 - 14 c. Approving use of materials that were not in compliance with approved plans and
15 specifications or applicable building codes;
 - 16 d. Failing to properly test structural materials used in construction of the Courthouse
17 Square;
 - 18 e. Failing to keep complete and accurate records of all inspections, tests and directives
19 made during the construction of the Courthouse Square.
- 20

21 26.

22 Defendant Salem's negligence as aforesaid breached the duty of due care owed to
23 Plaintiff as a member of the general public who first leased space within Courthouse Square. The
24 above described damage to Plaintiff was foreseeable in as much as Plaintiff intended to occupy

1 the demised premises on a long term basis and thereby advanced substantial money and effort to
2 make the premises operational as a coffee shop and limited deli.

3 27.

4 Plaintiff was not aware of Defendant Salem's negligence until Plaintiff received the
5 August 4, 2010 City of Salem letter (Exhibit 2) as aforesaid. Plaintiff could not have been
6 reasonably aware of such negligence until receipt of said letter.

7 28.

8 Plaintiff submitted a tort claim notice to Defendant Salem on January 13, 2011.

9 29.

10 Plaintiff has been damaged in the amount of \$80,574.88 as a result of Defendant Salem's
11 negligence. Plaintiff's damages include physical damage to tangible physical property, including
12 but not limited to tenant improvements.

13
14 **FOURTH COUNT**

15 **NEGLIGENCE – DEFENDANT LCG PENCE, LLC**

16 30.

17 Plaintiff incorporates herein by this reference paragraphs 12 through 16 above.

18 31.

19 At all times material herein, Defendant LCG Pence Construction, LLC (hereinafter
20 referred to as "Defendant Pence") was and is a duly organized limited liability company doing
21 business under the regular and assumed business name of LCG Pence Construction, LLC, also a
22 duly organized Oregon limited liability company.
23

1 32.

2 Defendant Pence, or its predecessor, was the prime general contractor who contracted
3 with Defendant SAMT and Defendant County to build the Courthouse Square as a transportation
4 hub, commercial office space and commercial retail space for physical occupancy by the general
5 public.

6 33.

7
8 At all times material herein the Defendant Pence had a duty to construct the Courthouse
9 Square commercial improvement in a good and workmanlike manner and review all facets of
10 such construction including, but not limited to, performing all construction pursuant to approved
11 plans and specifications in compliance with applicable building codes; insuring that all
12 construction work was done in a good and workmanlike manner pursuant to approved plans and
13 specifications and in compliance with all applicable building codes and insuring that all materials
14 used in construction according to approved plans and specifications met such plans and
15 specifications and applicable building codes in order to protect and preserve the public health,
16 safety and welfare and to insure that the premises would be safe for occupancy.

17 34.

18 The Defendant Pence was negligent and breached its duty of due care owed to Plaintiff as
19 a prospective renter of commercial lease space in the Courthouse Square project in one or more
20 of the following respects:

- 21 a. Failing to identify plans and specifications submitted for construction of the
22 Courthouse Square were not in compliance with applicable building codes and did
23
24

1 not meet industry standards for safe construction of a commercial improvement of
2 the size, type and configuration as a Courthouse Square;

3 b. Constructing the Courthouse Square commercial improvement in such a manner that
4 was not according to approved plans and specifications and in compliance with
5 applicable building codes;

6 c. Using materials that were not in compliance with approved plans, specifications or
7 applicable building codes in construction of the Courthouse Square improvements;
8 and
9

10 d. Failing to properly test structural materials used in construction of the Courthouse
11 Square.

12 35.

13 Defendant Pence breached its duty of due care owed to Plaintiff. The above described
14 damage was foreseeable in as much as Plaintiff undertook to occupy the demised premises on a
15 long term basis and thereby advanced substantial monies and effort to make the premises
16 operational as a coffee shop and limited deli. Plaintiff's damages include physical damage to
17 tangible physical property including but not limited to tenant improvements,

18 36.

19 Plaintiff has been damaged in the amount of \$80,574.88 as a result of Defendant Pence's
20 negligence.
21

22 WHEREFORE, Plaintiff prays for Judgment against Defendant SAMT, Defendant
23 County, Defendant Salem and Defendant Pence as follows:

24 1. For payment of the sum of \$80,574.88;

2. For its costs, disbursements and reasonable attorney fees; and
3. For such other and further relief the Court may deem just in the circumstances.

DATED this 16 day of February, 2011.

MARTINIS & HILL

By:

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SPACE LEASE

Date:

Nov 5, 2001

Between:

SALEM AREA MASS TRANSIT DISTRICT
555 Court St NE, Suite 5230
Salem, Oregon 97301-3736

("Landlord")

And:

ALLANN BROS. COFFEE CO. INC.
1852 Fescue St SE
Albany, Oregon 97321

("Tenant")

1.75/88
ORIGINAL

COPY

In consideration of the payment of rent and the covenants set forth herein, Landlord leases to Tenant and Tenant leases from Landlord, that certain space shown on the floor plan attached hereto as Exhibit A and designated as space A, (the "Premises"), located on the first floor of the building commonly known as Courthouse Square and located at 545 Court St NE, Salem, Oregon ("Building"), together with the right to park in three (3) parking spaces located in the underground parking garage, the location of which spaces shall be designated, from time to time, by Landlord and the right to store a reasonable amount of Tenant's cleaning equipment and supplies in a shared janitorial closet in a reasonably convenient location. The agreed square footage of the Premises is 1,439 square feet. The Building together with the parking garage and retail areas shall be referred to as the "Project". The Project is a condominium owned by the Association of Unit Owners of Courthouse Square Condominium. Landlord is a member of the Association and is the owner of condominium units including the Premises. The Association and Landlord reserves the right to change the name of the Building or the Project without notice to Tenant.

Section 1. Occupancy

1.1 Original Term. The term of this Lease (the "Term") shall be for a period of 120 months, commencing on the first to occur of the following dates: (a) the date on which Tenant receives an occupancy permit for the Premises, or (b) 120 days after Landlord has delivered possession of the Premises to Tenant with any work to be performed by Landlord in the Premises (as agreed by Landlord in an exhibit attached to this Lease, if any) substantially completed (the "Commencement Date"). Tenant shall promptly commence and diligently prosecute any work required in the Premises, and approved by Landlord pursuant to Section 7, after Landlord delivers possession of the Premises to Tenant. If the first day of the Term shall be a day other than the first day of a calendar month, then the Term shall be deemed extended by the number of days between the Commencement Date of this Lease and the first day of the first calendar month thereafter, so that the Term shall expire at the end of a calendar month.

1.2 Possession. In the event Landlord allows Tenant the right to early possession of the Premises for the purpose of installation of Tenant's improvements to the Premises or for other purposes, Tenant's entry into the Premises shall be subject to all terms and conditions of this Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, employees, licensees, agents, servants, guests, invitees, and visitors. If Landlord, for any reason, cannot deliver possession of the Premises by August 17, 2001 (the "Estimated Commencement Date"), this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting from such delay. In that event, however, Landlord shall deliver possession of the Premises as soon as practical. If Landlord is delayed in delivering possession to Tenant for any reason attributable to Tenant, this Lease shall commence on the Estimated Commencement Date. If Landlord, for any reason not attributable to Tenant, is unable to deliver possession of the Premises within 90 days following the Estimated Commencement Date, either party may terminate this Lease by written notice given within ten days following the Estimated Commencement Date.

ORIGINAL

1.3 Renewal Option. If the lease is not in default at the time the option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease for five (5) successive term of five (5) years, as follows:

- (1) The renewal term shall commence on the day following expiration of the preceding term.
- (2) The option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. Landlord and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.
- (3) The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Tenant will no longer have any option to renew this lease that has been exercised. Rent for a renewal term shall be the greater of (a) the rental during the preceding original or renewal term or (b) a reasonable rental for the ensuing term.
- (4) If the parties do not agree on the rent within 60 days after notice of election to renew, the rent shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the area. The appraiser shall be chosen by Landlord from a list of not fewer than five such individuals submitted by Tenant. If Landlord does not make the choice within five days after submission of the list, Tenant may do so. If Tenant does not submit such a list within 10 days after written request from Landlord to do so, Landlord may name as an appraiser any individual with such qualifications. Within 30 days after his appointment, the appraiser shall return his decision, which shall be final and binding upon both parties. The cost of the appraisal shall be borne equally by both parties.

Section 2. Rent

2.1 Base Rent. Beginning on the Commencement Date and continuing during the entire Term, Tenant agrees to pay to Landlord as base rent the sum of \$2,518.25 per month (the "Base Rent"). Rent shall be payable on the first day of each month in advance at such place as may be designated by Landlord except that rent for the first and last months have been paid upon the execution of this lease, and Landlord acknowledges receipt of this sum. All Rent shall be paid when due without notice, offset, or deduction or for any reason.

2.2 Security Deposit. To secure Tenant's compliance with all terms of this lease, Tenant has paid Landlord the sum of \$2,518.25 as a deposit. The deposit (which shall not bear interest to Tenant) shall be refundable within 30 days after expiration of the 60th month of the lease term provided that Tenant has, throughout such 60 month period, fully and faithfully complied with its obligations under this Lease. Landlord shall have the right to offset against the deposit any sums owing from Tenant to Landlord and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should Landlord elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Landlord, at its option, in addition to any other remedy provided by law or this lease for Tenant's nonperformance. Landlord shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with Landlord a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term.

2.3 Additional Rent. All taxes, insurance costs, utility charges that Tenant is required to pay by this lease, and any other sum that Tenant is required to pay to Landlord or third parties shall be additional rent. All rent and additional rent shall be paid promptly when due, in cash or by check, in

lawful money of the United States, without notice or demand and without deduction, diminution, abatement, counterclaim or set off of any amount or for any reason whatsoever.

2.4 Late Rent. Any rent or other payment required of Tenant by this lease shall, if not paid within 10 days after it is due, bear interest from the date due until paid at the rate of 3% per annum above the discount rate of the New York Branch Federal Reserve Bank on the due date. In addition to any other remedies available, if rent or other payment due is not paid within ten days after the due date, Landlord may impose a late charge equal to five percent of the amount due, which shall be payable as additional rent. Tenant shall pay the late charge upon demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment. If Tenant shall present to Landlord more than twice during the term checks or drafts not honored by the institution upon which they are issued, then Landlord may require that future payments of rent and other sums thereafter payable be made by certified or cashier's check.

2.5 Escalation. The base rent provided in Section 2.1 shall be increased in the month of the anniversary of the Commencement Date each year by a percentage equal to the percentage change in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor. Comparisons shall be made using the index entitled Portland-Salem, OR-WA--All Items (1982-84 = 100) (Series ID CUUUSA425SA0), or the nearest comparable data on changes in the cost of living if such index is no longer published. The change shall be determined by comparison of the annual figure for the year 2000, with the annual figure of each succeeding year. In no event, however, shall base rent be reduced below that payable during the first year of this lease. In no event shall the percentage increase in base rent in a single year exceed 5% or be less than 2.5%.

Section 3. Maintenance and Operating Expense.

3.1 Tenant shall pay to Landlord, as additional rent, within 10 days after delivery of Landlord's statement, but not more often than monthly, Tenant's share of the amount of all expenses and costs incurred by Landlord or otherwise charged to Landlord by the Association of Unit Owners of Courthouse Square Condominium relating to the operation, maintenance and repair of the Project. Nothing herein, however, requires Landlord or the Association to incur costs or expenses for operating or maintaining the Project. For expenses incurred with respect to the Project or all tenants of the Building, Tenant's share of expenses shall be equal to the amount of the expenses multiplied by a fraction, the numerator of which is the rentable area of the Premises and the denominator of which is the rentable area of the Building owned by Landlord. Landlord shall have the right to allocate expenses incurred with respect to a portion of the Project (for example, and without limiting the generality of the foregoing, some expenses might be incurred with respect to one or more specific leased spaces but not incurred with respect to spaces occupied by Landlord), among those occupying the portion of the Project affected or benefited by the expenses (a "Cost Pool"). Tenant's share of expenses subject to a Cost Pool that includes Tenant shall be equal to the amount of the expenses multiplied by a fraction, the numerator of which is the rentable area of the Premises and the denominator of which is the rentable area of the portions of the Building included in the Cost Pool. Rentable area shall be determined using the standard method employed by Landlord, applied in a consistent manner. Maintenance and operating expenses includes without limitation the following expenses and costs: operating, maintaining, repairing, lighting, cleaning, painting, striping, and (at Landlord's sole discretion) policing the Project; expenses and costs in connection with any maintenance and repair required of Landlord under this Lease; electricity, water and other utilities consumed within common areas or consumed by equipment or facilities serving common areas; alarm systems; pest control; insurance, including without limitation liability insurance for personal injury, death and property damage, all risk insurance against fire and other casualty with law and ordinance and earthquake coverage, loss or interruption of rental income coverage, workers'

compensation, fidelity bonds, insurance against liability for assault and battery, defamation and claims of false arrest, plate glass insurance; maintenance of sprinkler systems; removal of snow, ice, trash and debris; janitorial services; repairs, maintenance of and service contracts for elevators, heating, ventilating and air conditioning and other equipment and systems serving all occupants of the Building and their invitees; regulation of traffic; surcharges levied upon or assessed against parking spaces or areas, payments toward mass transit or car pooling facilities or otherwise as required by Federal, state or local government authorities; costs and expenses in connection with maintaining Federal, state or local governmental ambient air and environmental standards; sweeping parking areas; costs and expenses of repair or replacement of paving, curbs, walkways, landscaping, drainage, pipes, ducts, conduits and similar items; costs and expenses of planting, replanting and replacing flowers, shrubbery and planters; costs of providing light and power and heating, ventilation and air conditioning to the Project; maintenance, repair and replacement of utility systems serving the Project; costs and expenses of repair or replacement of paving, curbs, walkways, landscaping, storm drainage, water and sewer pipes, ducts, conduits, lighting facilities, electrical lines, poles and conduits and similar items; and costs and expenses of inspection, repair and depreciation and other charges of machinery and equipment (including leasing, financing or rental costs), and personal property or real property taxes and special assessments levied or assessed thereon, used in connection with providing any of the foregoing; management fees; and an overhead cost equal to fifteen percent (15%) of the total costs and expenses of operating and maintaining the common areas.

3.2 For the initial 12 months of the term, the Tenant's share of Operating Expenses will be \$402.92 per month. Following the initial 12 months of the term, the Tenant's share of Operating Expenses for each 12 month period will be charged on the basis of the actual Operating Expenses incurred by Landlord during the immediately preceding 12 month period.

3.3 Within sixty (60) days after the end of each calendar year, or as soon thereafter as practicable, Landlord shall provide a statement itemized on a line by line basis (the "Statement") to Tenant showing: (i) the amount of actual Operating Expenses for such calendar year, (ii) any amount paid by Tenant toward Operating Expenses during such calendar year on an estimated basis and (iii) any revised estimate of Tenant's obligations for Operating Expenses for the current calendar year.

3.4 If the Statement shows that Tenant's estimated payments were less than Tenant's actual obligations for Operating Expenses for such year, Tenant shall pay the difference. If the Statement shows an increase in Tenant's estimated payments for the current calendar year, Tenant shall pay the difference between the new and former estimates, for the period from January 1 of the current calendar year through the month in which the Statement is sent. Tenant shall make such payments within thirty (30) days after Landlord sends the Statement.

3.5 If the Statement shows that Tenant's estimated payments exceeded Tenant's actual obligations for Operating Expenses, Tenant shall receive a credit of such difference against payments of Rent next due. If the Term shall have expired and no further Rent shall be due, Tenant shall receive a refund of such difference within thirty (30) days after Landlord sends the Statement.

3.6 So long as Tenant's obligations hereunder are not materially adversely affected, Landlord reserves the right to change, from time to time, the manner or timing of the foregoing payments. No delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord, but any delay by Landlord (or any successor to Landlord in the event the Project is conveyed to a new owner during the Lease Term) in billing Tenant for any Operating Expenses of more than three (3) years, or two (2) years after this Lease has been terminated, whichever is less, from the date Landlord incurred such Operating Expenses shall be deemed a waiver of Landlord's right to require payment of Tenant's obligations for any such Operating Expenses.

3.7 If Tenant's obligation to pay Operating Expenses commences other than on January 1, or ends other than on December 31, Tenant's obligation to pay estimated and actual amounts toward Operating Expenses for such final calendar year shall be prorated to reflect the portion of such year included within the period for which Tenant is obligated to pay Operating Expenses. Such proration shall be made by multiplying the total estimated or actual (as the case may be) Operating Expenses for such calendar year by a fraction, the numerator which shall be the number of days within the period for which Tenant is obligated to pay Operating Expenses during such calendar year, and the denominator of which shall be the total number of days in such year.

3.8 Tenant shall have the right, after reasonable notice and at reasonable times, to inspect and photocopy Landlord's accounting records at Landlord's office, provided that Tenant gives notice within 30 days after receipt of Landlord's statement of operating expenses ("Review Period") that Tenant desires to conduct an inspection of the operating expenses for the period covered by the statement. If, after such inspection and photocopying, Tenant disputes the amount of its share of operating expenses for the period covered by the statement, Tenant may give written notice to Landlord within 15 days following such inspection that Tenant desires to conduct an audit. If Tenant timely requests and audit, an independent certified public accountant designated by Tenant, shall be entitled to audit and/or review Landlord's records, at Tenant's expense, to determine the proper amount of its share of operating expenses for period covered by the statement. If such audit or review reveals that Landlord has overcharged Tenant, then within thirty (30) days after the results of such audit are made available to Landlord, Landlord shall reimburse Tenant the amount of such overcharge plus interest at the rate of 8% per annum. If the audit reveals that Tenant was undercharged, then within thirty (30) days after the results of the audit are made available to Tenant, Tenant shall reimburse Landlord the amount of such undercharge plus interest at the rate of 8% per annum. Tenant agrees to pay the cost of such audit, provided that, if the audit reveals that Landlord's determination of Tenant's share of operating expenses as set forth in the statement under audit or review was in error in Landlord's favor by more than three percent (3%) of the amount set forth in such statement, Landlord shall pay the reasonable cost of such audit. Landlord shall be required to maintain records of all operating expenses and other Rent adjustments for the entirety of the three (3) year period following Landlord's delivery to Tenant of each statement setting forth Tenant's share of operating expenses. The payment by Tenant of any amounts pursuant to this Section shall not preclude Tenant from questioning the correctness of any statement provided by Landlord, but the failure of Tenant to object thereto prior to the expiration of the Review Period shall be conclusively deemed Tenant's approval of the statement.

Section 4. Use of the Premises

4.1 **Permitted Use.** The Premises shall be used for the sale at retail of coffee, espresso, tea, sodas, pastries, salads and sandwiches for on-site and off-site consumption, and for no other purpose. Tenant may, subject to permits and approvals by governmental agencies having jurisdiction, during the months of May through October place up to four (4) tables and ten (10) chairs on the sidewalk adjacent to the Building for use by Tenant's customers; provided, however, that in the event Landlord determines that such use is no longer acceptable to Landlord, Tenant shall refrain from any use of any area on the Property which is outside of the Premises following the expiration of 10 days prior written notice from Landlord. Except for legal holidays on which Landlord does not conduct operations, Tenant agrees that the entire Premises shall remain open for business at least during the hours of 7:00 a.m. to 6:00 p.m. on Monday through Friday and at least during the hours of 7:30 a.m. to 6:00 p.m. on Saturday.

4.2 **Restrictions on Use.** In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any activity that would tend to obstruct or interfere with the rights of other tenants or occupants of the Building and refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system, plumbing system, HVAC system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord, and refrain from installation and operation of electrical equipment which increases the amount of electricity which would normally be consumed upon the Premises when used for general retail purposes.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Landlord may withhold consent to antenna, aerials or other devices in its sole and absolute discretion. Landlord will not unreasonably withhold consent to exterior signage to the extent the same is compatible with the Building design and appearance.

(6) Conform to all rules and regulations from time to time established by Landlord regulating the activities of occupants of the Building and the operation of the Project. Without limiting the generality of the foregoing, such rules may establish hours during which any common area shall be open for use, may regulate deliveries to the Premises and may regulate parking by employees. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading and unloading to the Premises by 8:00 a.m. each day, and to prevent delivery trucks or other vehicles serving the Premises to park or stand in from on the locations of other tenants.

(7) Install and use hair interceptors, grease traps or other drain protection devices in the event that Tenant's permitted use includes any food service or other similar use.

(8) Not permit any cash, credit card, or coin-operated vending, novelty or gaming machines or equipment on the Premises, without the prior written approval of Landlord which may be withheld in its sole discretion.

(9) Refrain from using or occupying, or permitting or suffering all or any part of the Premises to be used or occupied for the offering, sale or display of obscene materials or obscene performances (as defined in Salem Revised Code 96.030 as in effect on June 1, 1998); the sale of alcohol; or the sale of tobacco products.

(10) Anything in the Lease to the contrary notwithstanding, Tenant shall not have the right to burden or interfere with the operation of the transit system in a manner reasonably consistent with usual and customary practices of transit system operations by the Salem Area Mass Transit District, or to burden, interfere with or prevent access to, or ingress to and egress from, any portion of the Project held by the Salem Area Mass Transit District. The Tenant acknowledges that the ownership interests of the

Salem Area Mass Transit District have been acquired in part with federal funds provided to the Transit District by the Federal Transit Administration pursuant to a grant agreement under 49 USC §5301 et seq. The federal government retains a continuing interest in all structures, equipment and other facilities acquired or constructed with federal funds that may be located in or upon the Project. If, for any reason, such structures, equipment or facilities are not used for transit purposes defined by the applicable law, regulations, grant agreements and FTA Master Agreement, for a period of at least 30 years from the date of the Declaration the Federal Transit Administration shall be entitled to reimbursement as provided under 49 CFR part 18 for its proportional share of the fair market value of such property funded by the Federal Transit Administration. Notwithstanding any provision of the Lease to the contrary, this Section 4.2(10) may not be amended without the approval of the Salem Area Mass Transit District and the Federal Transit Administration, or the successors to their governmental authority.

4.3 Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 4.1. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4.4 Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Tenant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Tenant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Section 5. Maintenance and Services

5.1 Landlord's Obligations. The following shall be the responsibility of Landlord:

(1) Repairs and maintenance of the Building, including roof and gutters, exterior walls (including painting), bearing walls, structural members, floor slabs, and foundation, and also including structural portions of the Building within the Premises, but otherwise excluding any portion of the Premises.

(2) Repair of common areas including sidewalks, driveways, curbs, parking areas, and areas used in common by Tenant and Landlord or tenants of other portions of the same building.

(3) Repair and maintenance of water, sewage, gas, and electrical services up to the point of entry to the Premises.

(4) Repair and maintenance of the heating, ventilating and air conditioning system to the point of entry to the Premises.

5.2 Tenant's Obligations. The following shall be the responsibility of Tenant:

- (1) Repair and maintenance of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.
- (2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 7.2 dealing with waiver of subrogation, but including repairs that would otherwise be the responsibility of Landlord under Section 5.1.
- (3) Ordinary maintenance of the heating, ventilating and air conditioning system and the water, sewage, gas, and electrical services from the point of entry to the Premises.
- (4) Any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 4.2(1).
- (5) Keeping the walks in front of the Premises free and clear of ice, snow, rubbish, debris, and obstructions. Tenant shall save and protect Landlord from any injury whether to Landlord or Landlord's property or to any other person or property caused by Tenant's failure to perform Tenant's obligations under this Section 5.2(5). Tenant's obligations under this Section 5.2(5) shall be performed at Tenant's cost and expense. Landlord reserves the right to cause the removal of ice, snow, debris and obstruction from the area in front of the Premises and Tenant shall pay the cost thereof within ten days after billing therefor.
- (6) All other repairs to the Premises which Landlord is not required to make under Section
- (7) Keeping the Project free from all accumulation of garbage, trash, litter, and debris which originates from the operation of Tenant's business from the Premises (e.g., cups, wrappers, napkins, food and liquids). In the event Landlord determines that Tenant has not complied with its obligations under this Section 5.2(7), Landlord may assess Tenant a reasonable charge for collection and disposal of garbage, trash, litter, and debris within the Project which originates from the operation of Tenant's business from the Premises.
- (8) Maintain the Premises in a clean, orderly, safe and attractive condition.

5.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

5.4 Reimbursement for Repairs Assumed. If either party fails or refuses to make repairs that are required by this Section 5, the other party may make the repairs and charge the actual costs of repairs to the first party. Such expenditures by Landlord shall be reimbursed by Tenant on demand together with interest from the date of expenditure by Landlord at the rate of 3% per annum above the discount rate of the New York Branch Federal Reserve Bank on the date of expenditure by Landlord. Such expenditures by Tenant may be deducted from rent and other payments subsequently becoming due or, at Tenant's election, collected directly from Landlord. Except in an emergency creating an immediate risk of personal injury or property damage, neither party may perform repairs which are the obligation of the other party and charge the other party for the resulting expense unless at least 30 days before work is

commenced, and the defaulting party is given notice in writing outlining with reasonable particularity the repairs required, and such party fails within that time to initiate such repairs in good faith:

5.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of Landlord to make repairs shall not mature until a reasonable time after Landlord has received from Tenant written notice of the repairs that are required.

5.6 Services. Landlord agrees to provide the following services to or for the benefit of the Premises: (a) heating, ventilating and air conditioning (during those respective seasons of the year in which they are necessary) for the comfortable use and occupancy of the Premises; and (b) electricity and water suitable for the permitted use of the Premises. All of the foregoing services will be made available, at a minimum, between 5:30 o'clock a.m. and 10:00 o'clock p.m., Monday through Sunday excluding legal holidays on which Landlord does not conduct operations. Landlord shall not be obligated to provide to or for the benefit of the Premises any of the foregoing services other than during the times and days described above. In the event that Tenant utilizes any such services other than during the times and days during which the Building is open to the public (Monday through Friday 7:00 a.m. to 6:00 p.m.), Landlord may elect to charge Tenant, as additional rent, a reasonable amount to compensate Landlord for the additional cost of providing such services based on the average cost of such services and the estimate as determined by Landlord's engineer of Tenant's usage of such services other than during the times and days described above. Nothing in this Section 5.6 shall in any way modify or limit the provisions of Section 3, provided that in no event shall Landlord charge Tenant more than once for the same expense. In no event shall Landlord be liable to Tenant for any failure, modification or interruption of any of the foregoing services for any cause other than the willful acts of Landlord done in bad faith. Except as may otherwise be agreed in a writing signed by Landlord, no parking is provided under this Lease for Tenant or its agents, employees or invitees.

Section 6. Alterations

6.1 Alterations Prohibited. Tenant shall make no improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent. Tenant shall give notice to Landlord prior to commencement of any work done on or services rendered or materials furnished to the Premises which might give rise to a claim for a lien, and shall permit Landlord to post a notice of nonresponsibility on the Premises. Tenant shall not install any equipment within the Premises which would materially affect the Project's water system, heating system, plumbing system, air-conditioning system, electrical system, telephone system, data communication system, or other mechanical or electrical system without obtaining Landlord's written consent. All plans and specifications for any such work shall be prepared by Tenant at Tenant's expense and shall be submitted to Landlord for its review. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. As used herein, "alterations" includes the installation of computer and telecommunications wiring, cables, and conduit. Landlord will reply to Tenant's request for approval of alterations within 14 business days from the date of receipt of Tenant's plans and specifications for the proposed alterations. Landlord will not unreasonably withhold its consent to such alterations.

6.2 Ownership and Removal of Alterations. All improvements and alterations performed on the Premises by either Landlord or Tenant shall be the property of Landlord when installed unless the applicable Landlord's consent or work sheet specifically provides otherwise. Improvements and alterations installed by Tenant shall, at Landlord's option, be removed by Tenant and the premises restored unless the applicable Landlord's consent or work sheet specifically provides otherwise. Tenant's trade fixtures shall remain Tenant's property.

6.3 Alterations Required. The improvements and alterations delineated on the work sheet attached to and made a part of this lease shall be performed by the party designated and within the time stated in the work sheet.

6.4 Waiver. Landlord may condition its consent to installation of a work of visual art in the Premises, as defined in the Visual Artists Rights Act of 1990 (VARA) at 17 USC §101, on Tenant's delivery to Landlord of a written waiver of moral rights under the VARA executed by the artist and to be executed by Landlord acknowledging that the work may be subject to destruction upon removal.

Section 7. Insurance

7.1 Insurance Required. Landlord shall cause the Building, including the Premises, to be covered against fire and other risks covered by an all risk property insurance policy. Tenant shall bear the expense of any insurance insuring the interest of Tenant in the Premises and the property of Tenant on the Premises against such risks but shall not be required to insure.

7.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 8. Taxes; Utilities

8.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall pay as due all real property taxes levied against the Premises. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant. In the event that the Premises are assessed in one or more tax accounts including other real property, the Landlord may make an equitable apportionment of the real property taxes among the properties assessed based on the relative values of the real property included in the tax account(s), provided that Landlord shall not be required to incur any expense or obtain an appraisal in connection with such equitable apportionment.

8.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 8.1.

8.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

8.4 Proration of Taxes. Tenant's share of real property taxes and assessments for the years in which this lease commences or expires shall be prorated based on the portion of the tax year that this lease is in effect. Notwithstanding the foregoing sentence, if the lease is terminated due to Tenant's default, taxes and assessments shall not be prorated as of the termination date and instead Tenant shall be responsible for all taxes assessed against the Premises prior to the date on which the Premises would no longer be subject to assessment of taxes, assuming that Landlord exercised reasonable care and diligence following termination of the lease to qualify the Premises for an exemption from real property taxes.

8.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this lease.

8.6 Payment of Utilities Charges. Tenant shall pay when due all charges for services and utilities consumed on the Premises or incurred in connection with the use, occupancy, operation, and maintenance of the Premises which are separately metered to the Premises or are otherwise are not provided through Landlord and included within the charges provided for under Section 3. Such services and utilities may include (but are not limited to) charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services.

Section 9. Damage and Destruction

9.1 Partial Damage. If the Premises are partly damaged and Section 9.2 does not apply, the Premises shall be repaired by Landlord at Landlord's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Landlord and shall be performed in accordance with the provisions of Section 5.3:

9.2 Destruction. If the Premises, the Building or the Project are destroyed or damaged such that the Premises are rendered unfit for use and occupancy or such that the cost of repair exceeds 50% of the value of the Premises before the damage, Landlord may elect to terminate the lease as of the date of the damage or destruction by notice given to the Tenant in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If Landlord does not elect to terminate, Landlord shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

9.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant or its agents, employees, independent contractors or invitees.

9.4 Damage Late in Term. If damage or destruction to which Section 9.2 would apply occurs within one year before the end of the then-current lease term, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage. Such termination shall have the same effect as termination by Landlord under Section 9.2.

9.5 Damage by Tenant. Notwithstanding anything herein to the contrary, Tenant shall be obligated to repair and restore the Premises, the Building or the Project if the same is damaged as a result of the fault of Tenant, its agents, employees, independent contractors or invitees

Section 10. Eminent Domain

10.1 Partial Taking. If a portion of the Project, the Building or the Premises is condemned and Section 10.2 does not apply, the lease shall continue on the following terms:

(1) Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

(2) Landlord shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises and, if applicable, to such common corridors, elevators or other essential facilities as are affected by the condemnation, as are necessary to restore the remaining Premises and, if applicable, such common corridors, elevators or other essential facilities as are affected by the condemnation, to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

(3) If a portion of the Premises is taken, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking as of the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Landlord to restore the balance of the Premises in anticipation of taking.

(4) If an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

10.2 Total Taking. The lease shall terminate as of the date the title vests in the condemning authorities if a condemning authority takes: (a) all of the Premises or a portion sufficient to render the remaining portion of the Premises reasonably unsuitable for the use that Tenant was then making of the Premises; (b) all of the Building or 25% or more of the rentable square footage of the Building; or (c) such portions of the Project as to impair the fair market value of the remainder of the Project by 25% or more over the fair market value of the Project prior to the taking. Such termination shall have the same effect as termination by Landlord under Section 9.2. Landlord shall be entitled to all of the proceeds of condemnation, and Tenant shall have no claim against Landlord as a result of the condemnation.

10.3 Sale in Lieu of Condemnation. Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

Section 11. Liability and Indemnity

11.1 Liens

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Any amount so added shall bear interest from the date of expenditure by Landlord at the rate of 3% per annum above the discount rate of the New York Branch Federal Reserve Bank on the date of expenditure by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

11.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant or its agents, employees, independent contractors or invitees on the Premises, in the Building or on the Project, or any condition of the Premises

in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused by Landlord's negligence or breach of duty under this lease.

11.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenant's cost: comprehensive general liability insurance in a responsible company with limits of not less than \$1,000,000 for injury to one person, \$2,000,000 for injury to two or more persons in one occurrence, and \$500,000 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the premises whether or not related to an occurrence caused or contributed to by Landlord's negligence. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant under Section 11.2, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring 10 days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the property.

11.3 Landlord Liability. Tenant is and shall be in exclusive control of the Premises, and Landlord shall not in any event whatsoever be liable for: (a) any loss, damage, claim or obligation or for any injury or damage to any property or to any person happening on, in, or about the Premises; (b) any injury or damage to the Premises or to any property, whether belonging to Lessee or to any other person; (c) any loss, damage, claim or obligation or for any injury or damage arising out of or relating to the presence or suspected presence of any Hazardous Substance in, on or under the Premises; (d) from any kind of injury that may arise from any other cause whatsoever on the Premises, from any cause whatsoever including, without limitation, from (i) fire, breakage, leakage, defect, or any condition of any part or portion of the Project; (ii) from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter; or (iii) due to the use, misuse, or abuse of all or any of the Project. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the interest of Landlord in the Premises, and Landlord shall not be personally liable for deficiency. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord under this Lease which do not involve the personal liability of Landlord. Landlord's liability, if any, to Tenant arising from whatsoever cause or occurrence shall be subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act.

Section 12. Quiet Enjoyment; Mortgage Priority

12.1 Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

12.2 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 13. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written

consent of Landlord, which consent will not be unreasonably withheld. This provision shall apply to all transfers by operation of law. If Tenant is a corporation, partnership, or other business entity this provision shall apply to any transfer of a majority voting interest of Tenant. No consent in one instance shall prevent the provision from applying to a subsequent instance. Landlord shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances, but Landlord may be obligated to seek the approval of the Federal Transit Administration which may withhold its consent in its sole and absolute discretion. As a condition to granting consent to any assignment or sublease, Landlord may elect to adjust the base rent, then in effect under Section 2.1, to become an amount equal to the fair market rent for the Premises commencing upon the effective date of the assignment or sublease.

Section 14. Default

The following shall be events of default:

14.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after it is due.

14.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Tenant begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

14.4 Abandonment. Failure of Tenant for 10 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 15. Remedies on Default

15.1 Termination. In the event of a default the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other

than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

15.3 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(1) The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out.

(2) The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

(3) Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the Premises for the period commencing on the date a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying out, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the discount rate of the New York Branch of the Federal Reserve Bank in effect on the date of Tenant's default.

15.4 Right to Sue More than Once. Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of 10% annum from the date of expenditure by Landlord. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 16. Surrender at Expiration

16.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in good condition and repair, and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require; provided, however, that Tenant may remove (at Tenant's sole expense) its legally protected trademarks and legally protected trade dress to the extent that such removal is necessary in order to avoid the likelihood of consumer confusion. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender. Tenant's obligations under this section shall be subordinate to the provisions of Section 9 relating to destruction.

16.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

16.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal (and at a rental rate equal to 200 percent of the rent last paid by Tenant during the original term), or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 16.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 17. Miscellaneous

17.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

17.2 Attorney Fees. In the event this Agreement is placed in the hands of an attorney for enforcement, the party in default agrees to pay the reasonable costs and expenses of enforcing this Agreement, including reasonable attorneys' fees not to exceed \$500.00 with respect to any one event of default. In the event a suit or action is filed to enforce this Agreement or to construe or interpret this Agreement, the prevailing party shall be entitled to recover the reasonable costs and expenses of the suit or action, incurred both before and after commencement of the action and at trial or upon appeal, including reasonable attorneys' fees. In the event suit or action is instituted in a Bankruptcy Court to enforce or interpret any of the terms of this Agreement, to seek relief from an automatic stay, to obtain adequate protection, to determine dischargeability of any debts, or to otherwise assert the interest of the creditor in a bankruptcy proceeding, the debtor shall pay the reasonable costs and expenses incurred by the creditor including reasonable attorneys' fees.

17.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first

given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

17.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

17.6 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

17.7 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

17.8 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

17.9 Prior Agreements. This Agreement is the entire, complete and exclusive agreement between the parties pertaining to its subject matter, and it supersedes all prior agreements, representations, and understandings of the parties. There are no agreements, representations or warranties except as set forth in this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

Landlord:

Salem Area Mass Transit District

By: 

Tenant:

Allann Bros. Coffee Co., Inc.

By: 

WORK AGREEMENT

SECTION 1. IMPROVEMENTS PROVIDED BY LANDLORD.

Unless otherwise agreed by Landlord and Tenant in an addendum to the Lease, Landlord shall provide the following improvements in the Premises ("Landlord's Work") and shall obtain, at Landlord's cost, the permits therefor: vanilla shell ready for Tenant improvements.

SECTION 2. IMPROVEMENTS PROVIDED AT TENANT'S EXPENSE.

Unless otherwise agreed by Landlord and Tenant in an addendum attached to the Lease, all improvements constructed in the Premises in addition to those listed in Section 1 of this Work Agreement shall be approved in writing by Landlord pursuant to Section 3 of this Work Agreement and the cost thereof, including the cost of obtaining all necessary permits and approvals, shall be paid by Tenant.

SECTION 3. DESIGN OF TENANT IMPROVEMENTS.

3.1 Tenant shall retain the services of a qualified architect or engineer, approved in advance by Landlord, to prepare the necessary drawings, including without limitation Basic Plans and Working Plans as described below for construction of the tenant improvements ("Tenant's Plans"). All Tenant's Plans shall be prepared at Tenant's expenses and shall be subject to the prior written approval of Landlord.

3.2 Tenant's architect or engineer shall determine that the work shown on Tenant's Plans is compatible with the basic Building plans and that necessary basic Building modifications are included in Tenant's Plans. All such modifications, including, without limitation all penetrations of the Building shell, shall be subject to Landlord's approval and the cost thereof shall be paid by Tenant.

3.3 The Basic Plans shall include (i) fully-dimensioned architectural floor plans showing partition layout, clearly identifying and locating equipment requiring special plumbing or mechanical systems, areas subject to above normal loads, special openings in the floor, ceilings, or walls, and other major or special features; (ii) fully-dimensioned plans locating telephone and electrical receptacles, outlets, and other items requiring electrical power (for special conditions, equipment, power requirements, and manufacturer's model numbers must be included), (iii) a lighting layout showing locations of all light fixtures and partitions; and (iv) any proposed alterations in or about the Premises. Four sets of the Basic Plans shall be delivered to Landlord within 60 days after effective date of the lease set forth above Landlord and Tenant's signatures.

3.4 Landlord shall review the Basic Plans and shall either approve the Basic Plans or reject them, in which case Landlord shall specify the deficiencies in the Basic Plans as submitted. If the Basic Plans are rejected, Tenant shall resubmit revised Basic Plans as soon as practicable until Landlord's approval has been obtained. Following Landlord's approval of the Basic Plans, Tenant's architect or engineer shall produce full working drawings for construction sufficient to obtain all necessary permits and with sufficient detail to construct the improvements, including specifications for every item included thereon (the "Working Plans"). The Working Plans shall be delivered to Landlord within 30 days after Landlord's approval of the Basic Plans.

3.5 Tenant shall be responsible for delays and additional costs in completion of Tenant's improvements caused by changes made to any of Tenant's Plans after the delivery dates specified above in this Section 3, by inadequacies in any of Tenant's Plans, or by delays in delivery of special materials requiring long lead times.

SECTION 4. CONSTRUCTION OF TENANT IMPROVEMENTS.

4.1 Upon completion of the Working Plans and at the request of Tenant, Landlord and its contractor shall provide to Tenant in writing an estimate of the cost of improvements to be provided at Tenant's expense pursuant to Section 2 of this Work Agreement. Within five days after Tenant's receipt of such estimated cost, Tenant shall delete any items which Tenant elects not to have constructed and shall authorize construction of the balance of the improvements. In the absence of such written authorization, landlord shall not be obligated to commence work on the Premises and Tenant shall be responsible for any costs due to any resulting delay in completion of the Premises. If required by Landlord's contractor, Tenant shall enter into a construction contract with respect to the construction of its improvements. Notwithstanding the provisions of this Section 4.1, Tenant may request Landlord's approval to use a contractor other than Landlord's for the construction of Tenant's improvements. Tenant shall include with any request for such approval a written estimate by Tenant's contractor of the cost of the improvements. Landlord shall respond to any request for such approval within ten days after receipt of the request. If Landlord approves Tenant's request to use its own contractor, the work performed by such contractor shall be in conformance with the provisions of Section 4.4 of this Work Agreement.

4.2 If Landlord's contractor is to construct Tenant's improvements, then prior to commencement of construction of the improvements, Tenant shall either (i) deposit with Landlord cash in an amount equal to the estimated cost of the improvements to be installed at Tenant's expense pursuant to Section 2 of this Work Agreement; or (ii) provide Landlord with other evidence or assurance, such as a bond or letter of credit, satisfactory to Landlord of Tenant's ability to pay the estimated cost of such improvements. Landlord's contractor shall then complete the improvements in accordance with the Working Plans. Any additional amounts payable by Tenant for the actual cost of the improvements shall be paid on or before the Commencement of the Lease, or upon receipt of the final accounting. If cash is deposited by Tenant as provided above in this Section 4, any excess paid by Tenant over the actual costs of the improvements shall be promptly refunded to Tenant by Landlord.

4.3 If Tenant desires any change to its improvements, Tenant shall submit a written request for such change to Landlord, together with all plans and specifications necessary to show and explain changes from the approved Working Plans. Any such change shall be subject to Landlord's approval. If Landlord's contractor is constructing Tenant's improvements, Landlord or such contractor shall notify Tenant in writing of the amount, if any, which will be charged or credited to Tenant to reflect the cost of such change.

4.4 If any work is to be performed in connection with the improvements on the Premises by Tenant's contractor as provided in Section 4.1 of this Work Agreement, such work shall conform to the following requirements:

4.4.1 Such work shall proceed only upon Landlord's written approval of the public liability and property damage insurance carried by Tenant's contractor. Tenant shall supply Landlord with the name, address, and emergency telephone number for Tenant's contractor and all subcontractors retained by Tenant's contractor.

4.4.2 All such work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable governmental regulations and all applicable safety regulations established by Landlord or its contractor for the Building generally. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have not responsibility for Tenant's failure to comply with all applicable governmental regulations.

~~4.4.3 Landlord may require that all such work be performed by union labor in accordance with any union labor agreements applicable to the trades being employed at the Building.~~ *AB GPH 11/5/01*

4.4.4 All such work shall be scheduled through Landlord and shall be performed in a manner and at times which do not impede or delay any work on the Premises being performed by Landlord's contractor.

4.4.5 Tenant's contractor shall store any materials only in the Premises or in such other space as may be designated by Landlord or its contractor from time to time. All trash and surplus construction materials shall also be stored within the Premises and shall be promptly removed from the Building.

4.5 Tenant's entry into the Premises for any purpose, including without limitation inspection or performance of work by Tenant's contractor, prior to the commencement Date, shall be subject to all the terms and conditions of the Lease, including without limitation the provisions of the Lease relating to the maintenance of insurance and indemnification by Tenant, but excluding the provisions of the Lease relating to the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

4.6 Tenant shall indemnify and hold harmless Landlord from and against all claims, losses, liabilities, and expenses (including without limitation attorneys' fees) arising out of or in any way related to the activities of Tenant's contractors (and any subcontractors) in the Premises or the Building. Without limiting the generality of the foregoing, Tenant shall promptly reimburse Landlord upon demand for any extra expense incurred by the Landlord as a result of faulty work done by Tenant or its contractors, any delays caused by such work, or inadequate clean-up.

Landlord:

Tenant:

Salem Area Mass Transit District

Allann Bros. Coffee Co., Inc.

By: *Jeff Hamner*

Stephanie Boech

Construction Allowance Addendum.

Landlord: SALEM AREA MASS TRANSIT DISTRICT

Tenant: ALLANN BROS. COFFEE CO. INC.

Premises: 545 Court St NE, Salem, Oregon

A. Construction Allowance

Landlord will supply a construction allowance for Tenant's expenses incurred in the construction of its leasehold improvements in the Premises up to a maximum of twenty two thousand four hundred eighty five dollars (\$22,485.00) (the "Construction Allowance"). Landlord will pay the Construction Allowance and, if applicable, the Lighting Allowance and the Sprinkler Allowance (defined below) to Tenant upon Tenant's compliance with the following requirements:

1. Tenant must submit (i) original receipted invoices marked "paid" in connection with all actual construction work performed by Tenant in the Premises and (ii) an affidavit of the general contractor certifying that the construction has been completed, that construction was completed in accordance with Landlord approved plans and specifications and that all subcontractors, laborers and material suppliers have been paid in full;
2. Tenant must submit appropriate lien waivers from the Tenant's general contractor;
3. Tenant must submit the appropriate governmental entity's certificate of occupancy;
4. Tenant shall not be in arrears with regard to any obligation of Tenant under the Lease;
5. Tenant shall have opened for business in the Premises in accordance with the terms and provisions of the Lease.

B. Lighting Allowance

Landlord agreed to construct vanilla shell improvements for the Premises including standard drop ceiling florescent lighting for 2 watts per square foot. Landlord has not installed the lighting since many tenants prefer to install special lighting. Landlord will therefore supply an additional construction allowance for Tenant's expenses incurred in the construction and installation of lighting for the Premises up to a maximum of seven thousand dollars (\$7,000.00) (the "Lighting Allowance").

C. Sprinkler Allowance

Landlord agrees to supply Tenant an additional construction allowance for Tenant's expenses incurred in connection with Tenant's modification of the sprinkler system to conform to building code requirements for Tenant's use up to a maximum of two thousand five hundred dollars (\$2,500.00) (the "Sprinkler Allowance").

Landlord:

Tenant:

Salem Area Mass Transit District

Allann Bros. Coffee Co., Inc.

By: 

By: 

555 Court Street NE, Suite 5230
Salem, OR 97301-3980

503-588-2424 Fax 503-566-3933
E-mail: skt@cherriots.org



COPY

August 4, 2010

Ms. Stephanie Black
Allann Bros Coffee Co.
1852 Fescue St., Se
Albany, OR 97321

Dear Ms. Black:


As you are aware, on Monday July 26, 2010, Salem Area Mass Transit received formal notice by its Courthouse Square consultant, Miller Consulting Engineers that the building and structures at 555 Court St., NE, Salem, were found to be in a dangerous condition and on July 30, 2010, the City of Salem gave formal notice to vacate the premises within 60 days.

Under the terms of our lease, we are terminating our lease with you under Section 9.2 for the property at 545 Court St., NE, effective 45 days from the date of damage, on September 4, 2010. By that date, all of your trade fixtures will need to be removed under the terms of Section 16.2, and you shall deliver all keys and surrender the premises in good condition and repair and broom clean, under the terms of Section 16.1.

We thank you for your patience during this time and wish you well in your continued endeavors.

If you have any questions, please contact me at 503-361-2555.

Sincerely,


Pat Mercier
Director of Finance